In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1352

IOWA INDEPENDENT BANKERS, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT

Petitioner, an association of 404 independent banks in Iowa, seeks review of a decision of the Court of Appeals for the District of Columbia Circuit (Pet. App. A) refusing to set aside an order of the Board of Governors of the Federal Reserve System. The Board's order approved the acquisition of two banks located in Iowa by intervenor-respondent Northwest Bancorporation, a "bank holding company" within the meaning of the Bank Holding Company Act of 1956, 70 Stat. 133, as amended, 12 U.S.C. 1841 *et seq.* (Pet. App. B).

Section 3(a) of the Bank Holding Company Act, 12 U.S.C. 1842(a), requires that the approval of the Federal Reserve Board be secured before "any bank holding company [may] acquire direct or indirect ownership or control of any voting shares of any bank, if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank." However, Section 3(d) of the Act prohibits a bank holding company from acquiring an interest in any bank located outside of the state in which the company maintains its principal place of business "unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication." In 1972, the Iowa legislature passed a statute authorizing out-of-state bank holding companies that on January 1, 1971, were both registered with the Federal Reserve Board and owned at least two banks in Iowa to acquire interests in additional banks within the State. Iowa Code Ann. §524.1805 (Supp. 1974-1975). Northwest Bancorporation is the only bank holding company that satisfies these criteria.

Following enactment of Iowa Code §524.1805, Northwest applied to the Federal Reserve Board for approval of its proposed acquisitions of 90 percent or more of the voting shares of the Bettendorf Bank and Trust Company, Bettendorf, Iowa, and the Security State Bank, Keokuk, Iowa (R. 1-195, 230-360). By order dated August 2, 1973, the Board unanimously approved the acquisitions (Pet. App. B), holding that they were authorized by Iowa Code §524.1805 (Pet. App. B, pp. A-31 to A-32). The Board also considered, as it was required to do by Section 3(c) of the

Bank Holding Company Act,[1] the competitive effects of the proposed acquisitions, the financial and managerial resources and future prospects of Northwest and the banks involved, and the convenience and needs of the communities to be served. The Board found these aspects of the acquisitions to be consistent with approval of the applications (Pet. App. B, pp. A-28 to A-30). The Board declined petitioner's invitation to pass upon the constitutionality of Iowa Code §524.1805, determining that it had neither the authority nor the expertise to consider that issue.

Petitioner then filed a petition for review in the court of appeals, contending that Iowa Code §524.1805 violated both the United States and Iowa Constitutions and conflicted with federal law governing bank holding companies. The court of appeals rejected these contentions and refused to set aside the Board's order (Pet. App. A).

1. Petitioner's principal contention (Pet. 5-7) is that Iowa Code §524.1805 effects a denial of equal protection. The Board takes no position with respect either to the merits of that contention or to whether the issue it raises is sufficiently important to warrant the exercise of this Court's certiorari jurisdiction.

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[1]Section 3(c) of the Act, 12 U.S.C. 1842(c), provides:

> The Board shall not approve—
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> (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
>
> (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
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> In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

2. Petitioner also contends (Pet. 7-8) that implicit in the Bank Holding Company Act is a prohibition against state discrimination between out-of-state bank holding companies—that is, that under the Act the states must choose between extending the right to acquire in-state banks to all out-of-state bank holding companies and extending it to none. This contention was properly rejected by the court of appeals, which noted (Pet. App. A, p. A-12) that nothing in the Bank Holding Company Act supports petitioner's reading and that, to the contrary, Section 7 of the Act, 12 U.S.C. 1846, provides:

> The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

Nor does the legislative history support petitioner's view of the congressional intent. See 102 Cong. Rec. 6750-6758, 6854-6862 (1956).

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JUNE 1975.

DOJ-1975-06